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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

**SMITH & NEPHEW, INC, and
JOHN O. HAYHURST, M.D.,**

Civil Case No. 04-00029-MO

Plaintiffs,
v.

**PLAINTIFFS' MOTION FOR
ENHANCED DAMAGES UNDER 35
U.S.C. § 284**

ARTHREX, INC.,

PATENT CASE

Defendant.

I. RULE 7.1 CERTIFICATION

The parties have conferred regarding the issue herein and have not reached an agreement.

II. MOTION

The plaintiffs, Smith & Nephew, Inc. and Dr. John O. Hayhurst hereby move this Court to award enhanced damages under 35 U.S.C. § 284.

On June 22, 2011, the jury found that Arthrex infringed claims 1-7 of the 5,601,557 patent (“the ‘557 patent”) by making and selling four different suture anchors. As a result of Arthrex’s infringement, the jury awarded the plaintiffs \$84,781,424.00 in damages, which award included \$67,793,868.00 in lost profits for the suture anchor sales lost by Smith & Nephew because of the infringement. The jury further found that Arthrex’s infringement was willful (*see* Dkt. No. 936). Based on the jury’s well-supported finding of willful infringement, as well as the reasons presented in Plaintiff’s Memorandum In Support Of Their Motion For Enhanced Damages Under 35 U.S.C. § 284 these damages should be enhanced.

DATED: September 1, 2011

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